

# EXHIBIT 4

to Declaration to Derek R. Hoffman



PRICE, POSTEL & PARMA LLP

## MEMORANDUM

TO: Antelope Valley Watermaster Board      DATE: June 13, 2019  
FROM: Craig A. Parton  
General Counsel to the Watermaster      FILE NO.: 23641-1  
Cc: Watermaster Engineer  
SUBJECT: Intervention by Non-Party as a Non-Stipulating Party

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### **I. Introduction**

SCI California Funeral Services, Inc., a California corporation, dba "Joshua Memorial Park," recently submitted correspondence setting forth its intent to intervene in the Judgment and thereafter pursue a Production Right as a Non-Stipulating Party pursuant to Paragraph 5.1.10 of the Judgment. Joshua Memorial Park is not a Party to the Judgment, as it was never named and served or otherwise properly joined in the Judgment, although it alleges a history of Groundwater Production in the Basin.

### **II. Question Presented**

May a Non-Party intervene in the Judgment and thereafter seek to obtain a Production Right as a Non-Stipulating Party pursuant to Paragraph 5.1.10, or is the intervening Non-Party limited to seeking a right to Produce Groundwater by submitting a New Production Application?

### **III. Brief Answer**

The plain language of the Judgment indicates that intervening Non-Parties may seek to obtain Production Rights as Non-Stipulating Parties. This conclusion may require revision if the Advisory Committee or the Board provides additional information regarding the history and negotiation of Paragraph 5.1.10.

### **IV. Discussion**

Paragraph 5.1.10 allows a Non-Stipulating Party to obtain a Production Right upon the Court's approval and subject to procedural or legal objection by any Stipulating Party. Non-Stipulating Parties allocated Production Rights shall not be entitled to Carry Over or Transfer rights. Like any other Party, the Production Rights of a Non-Stipulating Party are subject to Replacement Water Assessment to the extent the Non-Stipulating Party Produces Groundwater in excess of its confirmed Production Right. If the total Production by Non-Stipulating Parties ever reaches 7% of the Native Safe Yield, the Watermaster must determine whether such

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Production by Non-Stipulating Parties would cause Material Injury, in which case the Watermaster shall take action to mitigate the Material Injury including, but not limited to, imposing a Balance Assessment.

A “Non-Stipulating Party” is defined in the Judgment as “[a]ny Party who had not executed a Stipulation for Entry of this Judgment prior to the date of approval of this Judgment by the Court.” (Judgment at ¶ 3.5.24.) A “Party” is defined as, *inter alia*, any person “otherwise properly joined” in the Judgment. Therefore nothing in the definition of a Non-Stipulating Party necessarily requires that such person or entity have been a named Party as of the date of the Judgment.

Paragraph 20.9 allows any Non-Party to intervene in the Judgment if they propose to, *inter alia*, “acquire a Production Right.” This language demonstrates that a Non-Party may intervene to seek a Production Right, and that such intervention is not necessarily limited to persons or entities seeking New Production approval.

For these reasons the plain language of the Judgment arguably allows any person or entity who did not execute a Stipulation for Entry of Judgment prior to the date of the Judgment to first intervene in the Judgment to become a Party, and thereafter confirm its status as a Non-Stipulating Party seeking a Production Right pursuant to Paragraph 5.1.10.

This conclusion is supported by the fact that the Non-Stipulating Party Production Right pool of 7% of the Native Safe Yield is conceivably forward-looking, in particular because the total Production of all current Non-Stipulating Parties does not equal 1% of the Native Safe Yield. Why would the Court allocate such a relatively large pool of additional Production Rights to Non-Stipulating Parties if it was clear that the total Production of all such Parties would never reach the threshold? One possible explanation is that the 7% threshold was established prior to finalizing the list of Non-Stipulating Parties, in which case the threshold was intended only as a buffer pending confirmation of the identity and Production of all Non-Stipulating Parties as of the date of the Judgment. Nevertheless, without more information as to the Court’s intent when approving Paragraph 5.1.10, the most likely explanation is that it was drafted to create a pool of Production Rights for certain Parties (including Non-Parties who become Parties through intervention) who were not accounted for and did not execute a Stipulation for Entry of the Judgment, but may later seek a right to Produce Groundwater.

Paragraph 5.1.10 also provides certain procedural protections for the health of the Basin upon a Non-Stipulating Party’s application for Production Rights. Any such claim by a Non-Stipulating Party shall be subject to procedural or legal objection by any Stipulating Party, and the Court shall take evidence to determine whether such Non-Stipulating Party has a Production Right. Pursuant to Paragraph 20.9, the Watermaster Engineer will also have the opportunity to weigh-in on potential impacts to the Basin, and impose any necessary reduction in allowed Production. Therefore, from a policy perspective, allowing Non-Parties to intervene as Non-

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Stipulating Parties is unlikely to threaten the health of the Basin, as any Production Rights allocated to such Parties will be subject to significant scrutiny and opportunities to impose limitations.

**V. Conclusion**

Based on the plain language of the Judgment, combined with the relatively large pool of unused Production Rights allocated to Non-Stipulating Parties, the Watermaster General Counsel has determined that, pursuant to Paragraph 5.1.10, Non-Stipulating Party Production Rights may be allocated to Non-Parties who successfully intervene in the Judgment pursuant to Paragraph 20.9. Additional information regarding the history of the negotiation of the terms of Paragraph 5.1.10 may shed additional light on the issue, in which case this conclusion may require revision.

Therefore, as of the date of this memorandum, the Watermaster General Counsel has no objection to Joshua Memorial Park's proposed intervention in the Judgment, and further recommends allowing Joshua Memorial Park to attempt to prove-up its Non-Stipulating Party Production Rights pursuant to a motion to the Court under Paragraph 5.1.10.